



August 22, 2000

Ms. Amy F. Swann
General Counsel
Texas State Board of Examiners of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

OR2000-3222

Dear Ms. Swann:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138422.

The Board of Examiners of Psychologists (the "board") received a request from a complainant for a copy of all documentation submitted to the board by the requestor during the investigation of a T.S.B.E.P. number 97-91-8200. The requestor also seeks copies of any information available to him now that the case has been closed. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 501.205(a) of the Occupations Code. We have considered the exception you claim and reviewed the submitted representative sample of the information requested.¹ This office has also reviewed and considered information submitted by the requestor.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 501.205(a) of the Occupations Code provides, in relevant part, that "[e]xcept as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code." Subsection (b) of section 501.205 provides, in relevant part:

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the board in connection with the complaint *may* be disclosed to:

....

(2) a party to a disciplinary action against the license holder or that party's designated representative[.]

Occupations Code §501.205(b)(2) (emphasis added). After reviewing the submitted information, we conclude that the information you submitted as responsive to the request is protected from *public* disclosure by section 501.205(a). However, you ask whether, given the use of the term “may” in subsection (b), the release of complaint and investigation information to a “party to a disciplinary complaint” under subsection (b)(2) is mandatory or permissive. In our opinion, the use of the term “may” in subsection (b) indicates that release of complaint and investigation information under section (b)(2) is permissive. Thus, the board would have discretion to release the information to “a party to a disciplinary action.”²

In conclusion, we find that section 501.205(a) of the Occupations Code prohibits *public* release of the requested information. However, subsection (b)(2) permits the board, at its discretion, to either withhold complaint and investigation information or to release it to an individual who is a party to the related disciplinary proceeding. Therefore, the board may, but is not compelled to, release this information to the requestor to the extent that he was or is a “party.”

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²We note that the board must determine whether, under the circumstances, the requestor qualifies as a “party to a disciplinary action.”

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 138422

Encl. Submitted documents

cc: Mr. Robert P. Carswell
2676 Inwood Briar
San Antonio, Texas 78248
(w/o enclosures)